

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

MUELLER SPORTS MEDICINE, INC.,
a Wisconsin corporation,

Case No. 10-cv-1

Plaintiff,

JURY DEMANDED

v.

E.D.A. INTERNATIONAL, L.L.C.,
a New York Limited Liability Company,

Defendant.

COMPLAINT

Plaintiff Mueller Sports Medicine, Inc. ("Mueller"), for a complaint against defendant E.D.A. International, L.L.C. ("E.D.A."), alleges as follows:

THE PARTIES

1. Mueller is a Wisconsin corporation with its principal place of business at One Quench Drive, Post Office Box 99, Prairie Du Sac, Wisconsin 53578.

2. Upon information and belief, E.D.A. is a New York limited liability company with its principal place of business at 512 Avenue U, Brooklyn, New York 11223.

JURISDICTION & VENUE

3. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338, and 1367. The claims relate to violations of the trademark laws of the United States and Wisconsin's fraudulent representations statute, Wis. Stat. § 100.18.

4. This Court has personal jurisdiction over E.D.A. because E.D.A. committed the tortious acts complained of within this judicial district and is otherwise amenable to the jurisdiction of this Court under the Wisconsin long arm statute, Wis. Stat. § 801.05.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to Mueller's claims occurred in this district and E.D.A. is subject to personal jurisdiction in this district.

FACTS

6. Mueller is one of the largest vendors of sports medicine products in the United States. Mueller designs, manufacturers, and sells, among other things, a complete line of supports and braces that are used to prevent, and aid in the rehabilitation of, various injuries. Examples of Mueller's products include the ankle support, elbow support, knee support, and wrist support shown in the images on the left sides of Exhibits A through D of this Complaint.

7. Mueller's supports and braces are all marketed and sold in distinctive packaging trade dress, samples of which are shown in the images on the left sides of Exhibits A through D. Mueller's packaging trade dress consists of a series of curved panels arranged vertically as follows: an upper dark blue panel that is curved on the bottom, below that a red curved panel, below that a narrow white curved panel with a colored accent line running through it, below that a curved blue panel bearing a picture of the product contained in the package, and below that a red panel that is curved on the top. Mueller has used this trade dress in connection with the sale of its goods since at least 2003 and has used similar trade dress since at least 1984. Mueller has sold over 7 million units of its products in this trade dress in the two years between January 2008 and December 2009.

8. E.D.A. is currently selling a line of athletic “guards” in packaging that is virtually a direct copy of Mueller’s trade dress. E.D.A. is selling these products throughout the United States, including various retail stores in Wisconsin. Examples of E.D.A. products sold in Wisconsin are shown in the images on the right sides of Exhibits A through D of this Complaint.

9. Because of the similar nature of Mueller’s and E.D.A.’s products, retailers display both company’s products near each other, thus maximizing the chances that consumers will be confused about the source of E.D.A.’s products. A photo of a retail display containing E.D.A. products interspersed among Mueller’s products is contained at Exhibit E. In Exhibit E, the E.D.A. products are those labeled with a price of \$2.99. All of the remaining products in Exhibit E are Mueller products.

CLAIM 1 – VIOLATIONS OF THE LANHAM ACT, 15 U.S.C. § 1125

10. Mueller’s trade dress is inherently distinctive and has acquired secondary meaning.

11. E.D.A.’s use of Mueller’s trade dress in connection with the sale of sports medicine products constitutes trade dress infringement and unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125, because such use is likely to cause confusion, mistake, and deception as to the origin of the goods sold by E.D.A., and it is likely to mislead consumers and potential consumers into believing that E.D.A.’s goods are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by Mueller, or that Mueller’s goods are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by E.D.A.

12. E.D.A.’s use of Mueller’s trade dress in connection with the sale of sports medicine products constitutes false representation and false designation of origin in violation of the Lanham Act, 15 U.S.C. § 1125, because such use tends to describe or represent that the

goods sold by E.D.A. originate from, are somehow affiliated with, or are sponsored, authorized, approved or sanctioned by Mueller, or that Mueller's goods originate from, are somehow affiliated with, or are sponsored, authorized, approved or sanctioned by E.D.A.

13. E.D.A.'s acts have caused Mueller to sustain monetary damage, loss, and injury, in an amount to be determined at trial.

14. E.D.A.'s acts have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to Mueller for which it has no adequate remedy at law.

15. E.D.A. has engaged and continues to engage in the acts described above knowingly, willfully, and in bad faith, so as to justify the assessment of treble damages against it in an amount to be determined at the time of trial, along with Mueller's reasonable attorney fees and costs in this action.

CLAIM 2 – FRAUDULENT REPRESENTATIONS
IN VIOLATION OF WIS. STAT. § 100.18

16. E.D.A. is selling its products using Mueller's trade dress with intent to sell, distribute, and increase the consumption of those products.

17. E.D.A.'s uses of Mueller's trade dress are untrue, deceptive, and misleading representations that E.D.A.'s goods are somehow affiliated with, or are sponsored, authorized, approved, or sanctioned by Mueller.

18. Mueller has suffered pecuniary loss because of E.D.A.'s fraudulent acts described herein.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Mueller Sports Medicine, Inc., requests the following relief:

- A. A permanent injunction prohibiting E.D.A.'s use of Mueller's trade dress;
- B. An order, in accordance with 15 U.S.C. § 1117(a), requiring E.D.A. to:
 - i. account for and pay over to Mueller an amount equal to three times all of the profits, gains, savings, and advantages realized by E.D.A. as a result of its unlawful activities;
 - ii. pay over to Mueller an amount equal to three times the amount of damages sustained by Mueller as a result of E.D.A.'s unlawful activities;
 - iii. reimburse Mueller for the costs of this action; and
 - iv. reimburse Mueller for any reasonable attorney fees incurred as a result of Mueller's unlawful activities, including all attorney fees incurred during this action;
- C. An order pursuant to 15 U.S.C. § 1118, requiring E.D.A. to deliver up and destroy all product packaging in its inventory that contains Mueller's trade dress;
- D. An order requiring E.D.A. to request that all retailers selling E.D.A. products containing Mueller trade dress return those products to E.D.A. at E.D.A.'s expense and requiring E.D.A. to destroy the packaging for those products;
- E. An award of both pre-judgment and post-judgment interest on all monies to be paid to Mueller by E.D.A.;
- F. An award of all damages and pecuniary loss suffered by Mueller;

G. An award of all attorney fees and costs incurred as a result of E.D.A.'s actions, as provided in Wis. Stat. § 100.18(11)(b), or as may otherwise be provided by law; and

H. Such other relief as the Court deems just.

PLAINTIFF REQUESTS A JURY TRIAL.

Dated this 4th day of January, 2010.

s/Jeffrey A. Simmons

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